IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 29948 of 2005(M)

AGAINST THE ORDER IN EP.33/04 IN
OS.68/1994 of MUNSIFF COURT, CHITTUR

.....

PETITIONER:

MAYILSWAMY, S/O. SUPPAN,
OZHALAPATHYOORIL, OZHALAPATHY VILLAGE,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT:

CHINNAKANNAN, S/O. KURUPPASWAMY,
OZHALAPATHYOORIL, OZHALAPATHY VILLAGE,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P
SRI.M.V.BIPIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29948/2005 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMMON JUDGMENT IN O.S.175/1993, 400/1993 AND O.S.68/1994 DTD. 8/01/1996 PASSED BY THE MUNSIFF COURT, CHITTUR.**

EXT.P2: **COPY OF THE JUDGMENT IN A.S.74/1996 DTD. 29/10/2002 PASSED BY THE DISTRICT COURT, PALAKKAD.**

EXT.P3: **COPY OF THE EXECUTION PETITION NO.33/2004 IN O.S.68/1994 FILED BEFORE THE MUNSIFF COURT, CHITTUR.**

EXT.P4: **COPY OF THE REPORT AND PLAN DTD. 10/04/1995 SUBMITTED BY THE COMMISSIONER IN O.S.400/1993.**

EXT.P5: **COPY OF THE APPLICATION I.A.NO.2076/2004 FILED BY THE RESPONDENT.**

EXT.P6; **COPY OF THE APPLICATION I.A.NO.2077 OF 2004 FILED BY THE RESPONDENT.**

EXT.P7: **COPY OF THE E.A.NO.567/2004 FILED BY THE RESPONDENT.**

EXT.P8: **COPY OF COUNTER STATEMENT IN I.A.NO.2077/2004 FILED BY THE PETITIONER.**

EXT.P9: **COPY OF THE ORDER DTD. 10/02/2005 IN I.A.NOS.2076 & 2077 OF 2004.**

EXT.P10: **COPY OF THE ORDER DTD. 10/02/2005 IN E.A.NO.567/2004.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

.....

W.P.(C)No.29948 OF 2005

.....

DATED THIS THE 17th JULY, 2007

J U D G M E N T

Exts.P9 and P10 orders passed by the learned Munsiff allowing applications for amendment are under challenge. The ground which is prominently raised in this Writ Petition initiated by the defendant is that the trial court did not have jurisdiction to entertain applications for amendment, in view of the judgment of the lower appellate court.

2. I have heard the submissions of Mr.P.R.Venkatesh, counsel for the petitioner and Sri.Sajan Varghese, counsel for the respondent.

3. My attention was drawn by Mr.Venkatesh to the judgment of the Full Bench of this Court in **Thomas v. Kunjamma** (2005(4) KLT 286). The Full Bench has very clearly ruled that in a fact-situation like the one which obtains in the present case, the respondent should have moved the appellate court for amendment. Under these circumstances, I set aside Exts.P9 and P10 and permit the respondent to move the appellate court with appropriate applications seeking amendment in the lines sought for in I.A.2076 and 2077 of 2004 and E.A.567 of 2004. If any such amendment applications are received by the court of appeal within one month of the petitioner receiving copy of this judgment, those applications will be considered and disposed of by

that court in accordance with law, as expeditiously as possible and at any rate within six weeks of receiving the amendment applications.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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